



# California Integrated Waste Management Board

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Secretary for  
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Protection

## NOTICE OF PROPOSED RULEMAKING

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| <b>TITLE 14.</b>     | <b>NATURAL RESOURCES</b>   |
| <b>DIVISION 7.</b>   | <b>CALIFORNIA WASTE MANAGEMENT BOARD</b>                                 |
| <b>CHAPTER 4.</b>    | <b>RESOURCE CONSERVATION PROGRAMS</b>                                    |
| <b>ARTICLE 3.</b>    | <b>REGULATIONS FOR THE RIGID PLASTIC PACKAGING<br/>CONTAINER PROGRAM</b> |
| <b>SECTION 17946</b> | <b>DOCUMENTATION REQUIREMENTS</b>  |
| <b>SECTION 17949</b> | <b>VIOLATIONS AND PENALTIES</b>  |

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## PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board (CIWMB) proposes to modify existing regulations pertaining to assessment of administrative civil penalties for noncompliance with the RPPC law by adding clarifying language to Section 17946 and by deleting Sections 17949 (c) (1)(2) and adding clarifying language in Section 17949 (c) and (d).

The proposed regulations are intended to establish five clearly defined violations with the associated range of penalties for noncompliance with the Rigid Plastic Packaging Container (RPPC) Law by amending existing regulations.

## WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the CIWMB. **The written comment period for this rulemaking ends at 5:00 p.m. on October 6, 2003.** The CIWMB will also accept written comments during the public hearing described below. Please submit your written comments to:

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California Environmental Protection Agency

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The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web site at <http://www.ciwmb.ca.gov/>.

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### **PUBLIC HEARING**

CIWMB staff will conduct a public hearing at the Joe Serna, Jr. Cal/EPA Building, 2<sup>nd</sup> Floor, Sierra Hearing Room, Sacramento, CA on **October 7, 2003**. The hearing will begin at 1:30 p.m. and conclude after all testimony is given. The CIWMB requests that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The Sierra Hearing Room is wheelchair accessible.

### **INFORMATIVE DIGEST**

The Integrated Waste Management Act (Act) [AB 939 (Sher), Stats. 1989, c. 1095] and Public Resources Code (PRC) Section 40000 et seq., provides for the protection of public health and safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC Section 40502 requires the CIWMB to adopt rules and regulations to implement this Act. PRC Section 42322 sets out the statutory authority for assessing fines and penalties under the RPPC Law. Administrative civil penalties may be assessed for violations of the law only after a hearing is held before an Administrative Law Judge. Section 42322 allows assessment of \$50,000 per violation, with a maximum annual assessment for a company of \$100,000. The Board adopted general penalty criteria, which was used for one RPPC hearing held in the past. However, neither the statute, existing regulations, nor the existing general penalty criteria address a critical aspect of assessing these penalties, i.e., what constitutes a “violation.” The proposed regulations would establish five clearly defined violations with the associated range of penalties. This more specific penalty structure is crucial to assist the Administrative Law Judge and the Board in fairly and equally assessing administrative civil penalties for noncompliance with the RPPC Law.

### **POLICY STATEMENT OVERVIEW**

The CIWMB has determined that the existing regulations are not specific enough and need to be amended in order to assure that accused violators have fair and equal treatment when administrative civil penalties are imposed

## **PLAIN ENGLISH REQUIREMENTS**

CIWMB staff prepared the proposed final regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Section 11342.580 and 11346.2(a)(1). The proposed final regulations are considered non-technical and are written to be easily understood by those parties that will use them.

## **AUTHORITY AND REFERENCES**

PRC Sections 40502, 42325 provide authority for these regulations. The purpose of the proposed regulations is to implement, interpret, and make specific PRC Sections 42310, 42321, and 42322.

## **FEDERAL LAW OR REGULATIONS MANDATE**

Federal law or regulations do not contain comparable requirements.

## **LOCAL MANDATE AND FISCAL DETERMINATIONS**

CIWMB staff has determined that the proposed regulations do not impose: 1) a mandate on local school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

## **EFFECT ON HOUSING COSTS**

CIWMB staff made an initial determination that the proposed regulations will not have a significant effect on housing costs.

## **EFFECT ON BUSINESSES**

CIWMB staff made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

## **EFFECT ON SMALL BUSINESSES**

Although the proposed regulations would establish a structure for imposing penalties against violators of the RPPC law, the penalty amounts already exist in statute, i.e., \$50,000 per violation with a maximum assessment of \$100,000 per compliance year. The proposed penalty structure would simply establish what constitutes a violation and set out penalty ranges for each of those violations so that the regulated companies will have more certainty regarding how the

penalties could be assessed. Therefore, the CIWMB has determined that the regulatory proposal will have no significant adverse economic impact on business or small business.

### **EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA**

CIWMB staff has determined that the proposed regulatory action will not affect: 1) the creation or elimination of jobs within the State of California; 2) the creation of new businesses or the elimination of existing businesses within California; or 3) the expansion of businesses currently doing business with the state.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

CIWMB staff has determined that the regulatory proposal will have no significant adverse economic impact on private persons or enterprises.

### **CONSIDERATION OF ALTERNATIVES**

The CIWMB must determine that no reasonable alternative considered by the CIWMB or that has otherwise been identified and brought to the attention of the CIWMB would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The CIWMB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be directed to:

Michelle Marlowe, Integrated Waste Management Specialist  
California Integrated Waste Management Board  
Waste Prevention and Market Development Division  
P.O. Box 4025, MS 12  
Sacramento, CA 95812-4025  
Phone: (916) 341-6512  
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E-mail: [mmarlowe@ciwmb.ca.gov](mailto:mmarlowe@ciwmb.ca.gov)

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

Deborah Borzelleri, Staff Counsel  
California Integrated Waste Management Board  
Legal Office

P.O. Box 4025  
Sacramento, CA 95812-4025  
Phone: (916) 341-6056  
FAX: (916) 319-7594  
E-mail: [dborzell@ciwmb.ca.gov](mailto:dborzell@ciwmb.ca.gov)

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The CIWMB will have the entire rulemaking file, and all information upon which the proposed regulations are based, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Michelle Marlowe at the address, e-mail, or telephone number listed above. For more timely access to the proposed text of the regulations, and in the interest of waste prevention, interested parties are encouraged to access the CIWMB's website at <http://www.ciwmb.ca.gov/Rulemaking/RgUpdate.htm>

Additionally, the Final Statement of Reasons will be available at the above listed Internet address or you may call the contact persons named above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

The CIWMB may adopt the proposed regulations substantially as described in this notice. If the CIWMB makes modifications which are sufficiently related to the proposed text, it will make the modified text – with changes clearly indicated – available to the public for at least 15 days before the CIWMB adopts the regulations as revised. Requests for the modified text should be made to the contact person. The CIWMB will mail any modified text to all persons who testify at a public hearing if one is held; all persons who submit written comments at a public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes. The CIWMB will accept written comments on the modified regulations for 15 days after the date on which they are made available.